SUPREME COURT, U. S.

FILED
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JOHN F. DAVIS, CLERK

APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 478

AMALGAMATED FOOD EMPLOYEES UNION LOCAL 590, ET AL., *Petitioners,*

v.

LOGAN VALLEY PLAZA, INC. AND WEIS MARKETS, INC., *Respondents.*

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

PETITION FOR CERTIORARI FILED AUGUST 10, 1967
CERTIORARI GRANTED OCTOBER 23, 1967

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RECORD

IN THE COURT OF COMMON PLEAS
OF BLAIR COUNTY

No. 1915 in Equity

Logan Valley Plaza, Inc. and Weis Markets, Inc.,
Plaintiffs

vs.

Amalgamated Food Employees Union, Local 590, AFL-CIO, Penn Center Blvd., Pittsburgh, Pennsylvania, and John Doe and Richard Roe, Said Names Being Fictitious, True Names Unknown, Said Persons Being Officers, Employees, Agents, Servants and Pickets Employed by Defendant Union, and Any Other Individuals, Labor Unions or Labor Organizations Acting in Concert,
Defendants

I.

RELEVANT DOCKET ENTRIES

Complaint In Equity filed December 27th, 1965.

Dec. 27th, 1965, Plaintiff's Bond in the sum of $500.-00 filed. And Now December 27th, 1965, the

within Bond having been presented is, upon motion of John Woodcock, Jr., approved. By the Court, John M. Klepser, P.J.

Order

And Now, this 27th day of December, A.D. 1965, the plaintiff having filed a Complaint in Equity, together with injunction affidavits, and an injunction bond in the amount of Five Hundred Dollars ($500.00) which is hereby approved as required by law, it is Ordered and Decreed that a preliminary injunction shall issue as follows until further hearing on this matter:

The defendants, individually and collectively, the members of the defendant unions, their officers, representatives, servants, agents, employees and those working in concert with them, are enjoined from doing the following acts or any of them;

(a) Picketing and trespassing upon the private property of the plaintiff Weis Markets, Inc. Store No. 40, located at Logan Valley Mall, Altoona, Pennsylvania, including as such private property the store room, porch and parcel pick-up area.

(b) Picketing and trespassing upon the private property of plaintiff Logan Valley Plaza, Inc. located at Logan Valley Mall, including parking area and all entrances and exits leading to said parking area.

(c) Picketing at one time by more than —— —— pickets but in no event may pickets block in any manner entrances or exit areas to premises of both of the plaintiffs.

(d) Physically interfering with or preventing plaintiff Weis Markets, Inc. customers and delivery men and suppliers from entering or leaving plaintiff Weis Markets, Inc. store and parking area.

(e) Assaulting, threatening to assault or injure, or making insulting and threatening remarks, or injuring any of the plaintiff Weis Markets, Inc. employees, customers and delivery men and suppliers.

(f) Physically interfering with or preventing the plaintiffs employees from performing their duties as employees of the plaintiffs.

The 31 day of December, A.D. 1965, at 10 a.m. in Court Room No. 1, Blair County, Pennsylvania, is fixed as the time and place of hearing of plaintiffs' motion to continue the injunction.

By the Court,
John M. Klepser,
P. J.

Jan. 4, 1966, Motion to dissolve or modify preliminary injunction filed.

January 4, 1966, Testimony taken.

Feb. 14, 1966, Testimony taken January 4th, 1966 filed.

February 14, 1966, Opinion filed, with the following Order thereon:

Order

And Now, this 14th day of February, A.D. 1966, after hearing on the preliminary injunction heretofore issued in the above-captioned matter, at which hearing the defendant union was represented by counsel, and upon consideration of the testimony and exhibits adduced at said hearing, it is Ordered, Adjudged and Decreed that: (a) the defense motion to dissolve or modify said preliminary injunction be and the same is hereby denied and dismissed, and

(b) said preliminary injunction is hereby continued until further adjudication of this case or until further order of this Court, the security heretofore entered by the plaintiffs also to be continued.

By the Court,
(s) John M. Klepser,
P. J.

March 28, 1966, Affidavit of Service of Notice To Taking of an Appeal filed by John R. Strawmire, Esq., Attorney for Appellant, as follows:

March 28, 1966, Notice to Honorable John M. Klepser, President Judge of Blair County, that an appeal is taken to the Supreme Court, filed.

March 28, 1966, Notice to Stenographer, Court of Common Pleas, that an appeal to Supreme Court is taken, filed.

March 28, 1966, Notice to John Woodcock, Esq., and Sidney Apfelbaum, Esq., Attorneys for appellee, that an appeal to Supreme Court is taken, filed.

March 21, 1967, Majority and dissenting opinions of the Supreme Court of Pennsylvania and judgment filed.

II.

COMPLAINT

To the Honorable, the Judges of Said Court:

Logan Valley Plaza, Inc. and Weis Markets, Inc., Plaintiffs above named, complain of the Defendants and say:

1. Logan Valley Plaza, Inc., one of the plaintiffs is a corporation duly organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania, engaged in the conduct of business for the purpose of construction, ownership and leasing retail storerooms and parking areas for vehicles of customers and business invitees of tenants, and having its principal place of business at 422 Lincoln Street, Johnstown, Cambria County, Pennsylvania.

2. Weis Markets, Inc. one of the plaintiffs is a corporation duly organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania, engaged in the sale of food and sundry household articles, employing approximately two thousand two hundred persons in its business, and having its principal place of business at 1000 South Second Street, Sunbury, Pennsylvania.

3. The Defendant, Local Union No. 590, Pittsburgh, Pennsylvania of the Amalgamated Food Employees Union, AFL-CIO (hereinafter referred to

as the "Union"), is an unincorporated labor organization, with its principal office located at 201 Penn Center Boulevard, Pittsburgh, Pennsylvania.

4. The Defendants, "John Doe" and "Richard Roe", first and last names fictitious, true first and last names unknown to the Plaintiff, are officers, employees, agents and servants of the Defendant union and/or are employed by the Defendant Union, and upon information and belief the said Defendants have picketed and engaged in unlawful acts hereinafter stated and will continue to picket and engage in said unlawful acts at the behest of the Defendant Union and at the direction of the Defendant's officers and agents and with full knowledge, acquiescence and consent of said Defendant Union.

5. In addition to the aforesaid Defendants, there are, engaged by and acting for and on the behalf of and for the benefit of and at the instance and direction of the Defendants named herein, certain and various other persons whom both of the Plaintiffs are presently unable to identify by name, and who have been and who are presently participating in the acts and course of conduct hereinafter complained in conjunction, concert, and conspiracy with the aforesaid Defendants.

Plaintiffs are without knowledge and without means to ascertain the precise number or the identities of the members of the Defendant Union or of the precise identity or number of the other labor organizations and unions and the individuals, agents

and officers thereof acting in concert with the Defendant Union, and it is, therefore, impossible to name them as party defendants in this suit.

6. Commencing December 17, 1965, the Defendants, through their officers, servants, agents and employees, as well as employees of A. & P. Supermarkets and others, have conspired and combined unlawfully to interfere with the Plaintiffs' businesses by engaging in the following unlawful acts and conduct at a certain supermarket owned by Weis and opened for business December 8, 1965, said Weis Supermarket being located at and surrounded by the property of the other plaintiff known as Logan Valley Plaza, Inc., Altoona, Pennsylvania, all of which more clearly appear in the affidavits attached hereto.

(a) They have caused large number of persons to congregate in front of and about the entrances of the Weis Markets, Inc. store restricting said Plaintiff's employes, customers and other persons having lawful business therein, from entering or leaving said Plaintiff Corporation's premises.

(b) They have caused large numbers of persons to congregate in front of and about the parking and customer loading areas of the Weis Markets, Inc. store, thereby interfering with and restricting said Plaintiff's employees, customers and other persons having lawful business therein from parking their vehicles and entering and leaving said plaintiff's parcel pick-up zone.

7. Upon information and belief that the persons who have been and who are presently participating in the acts and course of unlawful conduct complained of are officers, servants, agents and employees of the Defendant, and are comprised of employees of the A. & P. supermarket and others on Plank Road, Altoona, Pennsylvania, competitors of Weis Markets, Inc., one of the Plaintiffs, the purpose of such unlawful conduct being to disrupt and interefere with said Plaintiff's business, resulting in the loss of good will of said Plaintiff's customers and a reduction of sales, all to the unlawful and unfair competitive advantage of A. & P. supermarket on Plank Road, Altoona, Pennsylvania, and others.

8. Plaintiff is the owner-occupant of property located at the Logan Valley Plaza, Altoona, Pennsylvania, comprising a store proper, a porch across the front thereof and certain defined portions of the parking lot parcel pick-up area as well as record-grantee by virtue of certain documents of title in the form of reciprocal easements and privileges related to parking areas owned by plaintiff Logan Valley Plaza, Inc.

9. Along one side of these premises there is a public thoroughfare known as Plank Road which contains a wide developed and level berm; along another side of these premises is a public thoroughfare known as Goods Lane which contains a wide developed and level berm.

10. Both of the Plaintiffs have informed the Defendants that they are to cease trespassing on

the porch parcel pick-up areas and parking lot and have advised them to remove themselves to the berm on the public thoroughfare where they may engage in reasonable, orderly and lawful picketing.

11. Plaintiff, Weis Markets, Inc., has caused notice in writing to be posted upon its premises specifically advising that there be no trespassing by persons other than Weis employees upon the property and premises of the Plaintiff, Weis Markets, Inc.

12. Notwithstanding said notice to desist, Defendants have persisted and still do persist in committing the foregoing acts of trespass.

13. Upon information and belief Plaintiffs aver that the Defendants intend to continue with their illegal trespassing notwithstanding there are well-developed berms on public thoroughfares available on two sides of Plaintiffs' premises which may be used by said Defendants for reasonable, orderly and lawful picketing.

14. By virtue of the aforesaid unlawful picketing and trespass Defendants have seized Plaintiffs' property and deprived them of its use.

15. By reason of the Defendants' unlawful acts, the Plaintiffs have suffered and will continue to suffer great and irreparable damages, though the amounts of which cannot now be definitely ascertained, in respect to the following, among other things:

(a) Property of both of the plaintiffs will be further harmed or destroyed.

(b) The supermarket business of one of the plaintiffs, Weis Markets, Inc., will continue to be disrupted and said Plaintiff will be unable to adequately supply the needs of its customers, and said Plaintiff will therefore lose the good will of its customers.

(c) Competitors of Plaintiff Weis Markets, Inc., namely, the A & P supermarket and others on Plank Road, located only one-half mile from said Plaintiff's premises, and drawing its customers from the same customer area as said Plaintiff, will gain an unjust and unlawful business advantage by virtue of the unlawful activities of its employees, agents and servants.

(d) Weis Markets, Inc., one of the Plaintiffs will lose great sums of money, the amounts of which will not be definitely ascertainable, due to its inability to continue its business by reason of the Defendants' unlawful interference with said business.

(e) Logan Valley Plaza, Inc., one of the Plaintiffs will lose great sums of money, the amounts of which will not be definitely ascertainable, due to its inability to peacefully conduct and continue its business of construction and rental of buildings as well as furnishing of parking areas for vehicles free from interference of trespassers who are unlawfully interrupting the peaceful conduct of business.

16. There is not presently and there never has been a labor dispute between Plaintiff Weis Markets, Inc., and the Defendant Union.

17. The Plaintiffs have no adequate remedy at law, and will suffer irreparable loss and damage unless Defendants be preliminarily until hearing and thereafter perpetually enjoined as is more fully hereinafter set forth.

Wherefore, Plaintiffs pray your Honorable Court for the following relief:

1. That your Honorable Court enter a decree preliminarily until hearing and thereafter perpetually enjoining the Defendants individually and collectively, the members of Defendant Union, their officers, representatives, servants, agents and employees, and any other person or persons acting in concert with them or otherwise participating in their aid, from doing the following acts or any of them:

(a) Picketing and trespassing on the premises of the Plaintiff Weis Markets, Inc., and also the premises of Logan Valley Plaza, Inc., also plaintiff herein, in Altoona, Pennsylvania.

(b) Picketing by more than two persons on each of the berms on the public thoroughfares adjoining the Plaintiffs' premises.

(c) Physically interfering with or preventing the customers of Plaintiff Weis Markets, Inc., from entering or leaving the said Plaintiff's store.

(d) Physically interfering with or preventing the customers of Weis Markets, Inc., from entering or leaving the customer loading area or parking lot adjacent to the store of Plaintiff Weis Markets, Inc.

(e) Trespassing upon the property of Plaintiff Logan Valley Plaza, Inc.

2. That the Defendants pay the costs of these proceedings.

3. Such other and further relief, including pecuniary damages, as your Honorable Court may deem just and proper.

And your Plaintiffs will ever pray, etc.

Sidney Apfelbaum,
Robert Lewis,
Norman Krumenacher,
John Woodcock,
Attorneys for Plaintiffs.

Commonwealth of Pennsylvania,
County of Northumberland, *ss:*

Micheal C. Rheam, being duly sworn according to law, deposes and says that he is the Vice-President and Secretary of Weis Markets, Inc., the within plaintiff, and that he is authorized to make this affidavit on behalf of the plaintiff corporation; that these facts within his knowledge set forth in the foregoing complaint are true and correct and that those facts not within his personal knowledge he

believes to be true and expects to be able to prove the same at the trial of this case.

Michael C. Rheam

(Jurat)

Commonwealth of Pennsylvania,
County of *ss:*

Stephen J. Siciliano, by his attorney John Woodcock, being duly sworn according to law, deposes and says that he is President of Logan Valley Plaza, Inc., and that he is authorized to make this affidavit on behalf of the plaintiff corporation; that these facts within his knowledge set forth in the foregoing complaint are true and correct and that those facts not within his personal knowledge he believes to be true and expects to be able to prove the same at the trial of this case.

Stephen J. Siciliano by John Woodcock his attorney

(Jurat)

[Plaintiffs' Bond Omitted]

County of Blair,
State of Pennsylvania, *ss:*

My name is Kenneth Bartlett, of 531 Pine Street, and I am an employee of Weis Markets, Inc., store located at Altoona, Pennsylvania.

On the evening of December 21, 1965, which was a Tuesday night.

I was working when I saw one of the men who had been on the picket line, and he was then inside the Weis store talking to a customer.

Kenneth Bartlett

(Jurat)

County of Northumberland,
State of Pennsylvania, *ss.:*

My name is Alex T. Baceski, and I work for Weis Markets, Inc.

At approximately 6:40 p.m., on December 22, 1965, I observed a man who had been on the picket line carrying a card, and when I observed him he was inside the Altoona Weis store. He was halfway down the produce aisle, and headed further into the store. He had no sign on at this time.

I went up to him and asked, "Haven't I seen you on the picket line?" He said, "Have you?" I said, "Yes, I have. You are not welcome in here."

He said, "Can't I even see the store?" I repeated, "you are not welcome here."

He walked out to the porch of our store and then to the pick-up zone, and I observed him secure a sign from another picket who was carrying a couple

of signs, put one on, and started to walk as a picket in front of the store.

Alex T. Baceski

(Jurat)

Commonwealth of Pennsylvania,
County of Northumberland, ss:

Fred Basehore, being duly sworn deposes and says:

I reside at R D No. 2, Lewisburg, Pennsylvania. I am the Assistant General Superintendent for Weis Markets. I was at the Weis Supermarket in Altoona, Pennsylvania the week of December 13-17, 1965 to supervise that store's opening operations. On Friday night, December 17, 1965, a group of men commenced picketing in the area directly in front of the entrances to the store, more particularly in the customer loading area immediately adjacent to the store's porch. There were between 4 and 7 pickets walking at all times. The pickets were wearing signs which read "Weis Markets is non-union. These employees are not receiving union wages or other benefits. Amalgamated Food Employees Union Local 590." At approximately 8:00 p.m. a person, later, identified to me as Charles Toth, a union organizer, arrived on the scene. I was told by one of Weis' suppliers that Mr. Toth was a former A & P meat manager.

Between 8 and 9:00 p.m. there was a great deal of confusion and congestion at the area where the pickets were walking. Since the pickets were in the customer loading area, customer cars could not pull into the area at normal speed, nor could they leave until they had been delayed for some time. As a result, cars and customers were lined up by the loading area awaiting service. At approximately 9:00 a car pulled into the customer loading area. The occupant of the vehicle began talking to Toth. One of the pick-up boys came into the store and told be that this car was blocking the customers from entering or leaving the pick-up area, and that car loading was at a standstill. The pick-up boy told me that the occupant of the car was the store manager of the A & P store on Plank Road. I immediately went outside and approached the car. I told the occupant to move his vehicle out of the pick-up area. He replied, in a rough and abrasive manner, "Are you telling me, or asking me". I replied, "If that's the way you want it, I'm asking you, will you please move your car up out of the way". At that time I had brushed the arm of Mr. Toth. He immediately yelled at me, in a threatening manner, "Don't you touch me," I replied, "What did you say," He repeated the warning, "Don't you ever touch me." The car then pulled away, and I walked back into the store.

On Saturday, December 18, 1965, the pickets arrived at approximately 10:00 a.m. At 10:50 I was told that one of the pickets worked at the Plank

Road A & P. Later in the day, I was told by a customer that at least 3 of the 4 pickets then present were employed at the Plank Road A & P.

As was the situation on December 17, the flow of traffic to and from the pick-up area was hindered because of the activities of the pickets in this area. Customers had to wait until the pickets got out of the way before they could move their cars into the loading area and once loaded had to wait and avoid the pickets in order to leave.

On Monday, December 20, 1965, the pickets arrived at approximately 6:00 p.m. The traffic situation at the loading area became congested as it had been on Friday and Saturday. The pickets walked two and three abreast, and cars could not pass until they had moved away. As a result, I noticed on two occasions within a five minute period that three cars had to wait to park their cars in the parking area near the pick-up area. By 7:15, the number of pickets had increased to ten, and they were wandering in and out of the pick-up area to within two feet of the porch.

At that point a boy in the pick-up zone was told by a picket that they are going to run us out of town. At about 6:05 p.m. I left the store and approached one of the pickets. I asked him whether he intended to picket tonight. He replied, "yes". I told him that he was picketing in our parking lot, and if he wanted to picket that he should go out to the berm. The man replied that he thought this was

Crown's parking lot. I told him that this was our parking lot. He then asked where our lot ends. I told him the entire lot was ours, right out to the berm, and that he should picket there if he intended to continue picketing.

On December 21, 1965, the pickets arrived at approximately 10:30 a.m. At 10:30 a.m. the pickets stopped and talked to a customer who was about to enter the store. At about 10:35 the meat manager of an A & P store approached the pickets, and they engaged in a conversation. The manager then came into store and comparison shopped our meat prices. All the pickets at this time were from the A & P on Plank Road.

At about 2:00 the pickets were joined by four girls wearing signs. The girls picketed on the loading porch by the entrances to the store. Later they proceeded to walk four abreast in the pick-up zone, effectively blocking the flow of traffic in and out of that area.

I have read the above and it is true to the best of my knowledge and belief.

Fred Basehore

(Jurat)

ORDER

And Now, this 27 day of December, A.D. 1965, the plaintiff having filed a Complaint In Equity, to-

gether with injunction affidavits, and an injunction bond in the amount of Five Hundred Dollars ($500.00) which is hereby approved as required by law, it is Ordered and Decreed that a preliminary injunction shall issue as follows until further hearing on this matter:

The defendants, individually and collectively, the members of the defendant unions, their officers, representatives, servants, agents, employees and those working in concert with them, are enjoined from doing the following acts or any of them:

(a) Picketing and trespassing upon the private property of the plaintiff Weis Markets, Inc., Store No. 40, located at Logan Valley Mall, Altoona, Pennsylvania, including as such private property the storeroom, porch and parcel pick-up area.

(b) Picketing and trespassing upon the private property of plaintiff Logan Valley Plaza, Inc. located at Logan Valley Mall, including parking area and all entrances and exits leading to said parking area.

(c) Picketing at one time by more than ——— pickets but in no event may pickets block in any manner entrances or exit areas to premises of both of the plaintiffs.

(d) Physically interfering with or preventing plaintiff Weis Markets, Inc. customers and delivery men and suppliers from entering or

leaving plaintiff Weis Markets, Inc. store and parking area.

(e) Assaulting, threatening to assault or injure, or making insulting and threatening remarks, or injuring any of the plaintiff Weis Markets, Inc. employees, customers and delivery men and suppliers.

(f) Physically interfering with or preventing the plaintiffs employees from performing their duties as employees of the plaintiffs.

The 31 day of December, A.D. 1965, at 10 a.m., in Court Room No. 1, Blair County, Pennsylvania, is fixed as the time and place of hearing of plaintiffs' motion to continue the injunction.

By the Court:
John M. Klepser,
P. J.

III.

MOTION TO DISSOLVE OR MODIFY PRELIMINARY INJUNCTION

To John M. Klepser, President Judge of Said Court:

And now, this 4th day of January, 1966, the defendant, by its attorney, John R. Strawmire, Esquire, moves the Court to dissolve the Preliminary Injunction formerly entered in this case or to modify it for the following reasons:

1.

That the matter here in question grows out of a labor dispute as defined by the "Labor Anti-Injunction Act" Act of June 2, 1937, P. L. 1198 §§1, 2 and 3. The labor dispute here involved is a controversy concerning the terms and conditions of employment for the employees of the plaintiff, Weis Markets, Inc. at their Store No. 40 located at Logan Valley Mall, Altoona, Pennsylvania. That constituting such a labor dispute within the terms of said Act, your Honorable Court is without jurisdiction to issue any restraining order or temporary or permanent injunction relating to said labor dispute.

2.

That the activity here complained of amounts to nothing more than peaceful, informational

picketing by Union Members for the purpose of informing the public of the terms and conditions of employment of the employees of Weis Markets, Inc. at said store and as such, is constitutionally protected by the Labor Anti-Injunction Act and should not be enjoined.

3.

That said conduct is not calculated to coerce the plaintiff-employer to compel his employees to prefer or become members of the defendant-union.

4.

That such conduct is not unlawful picketing or mass picketing or amounting to a seizure within the meaning and construction of the Labor Anti-Injunction Act.

5.

That the requirements of equitable jurisdiction have not been shown in that the plaintiffs have failed to show that immediate and irreparable injury would be sustained to it before notice could be given to the defendant or a hearing held on the matter. That such immediate and irreparable injury means immediate, injurious consequence to the plaintiffs that cannot be repaired under any standard of compensation. That such peaceful and lawful picketing as here engaged in by the defendant should not be enjoined merely because of an economic loss to the plaintiff-employer may result therefrom. That said economic loss is com-

pletely compensable in money damages and as such, a complete and adequate remedy at law exists for the plaintiffs to rely upon. That the area whereon the defendant was conducting a peaceful and lawful picketing is a shopping center, pedestrian and parking area and as such, constitutes quasi-public property even though privately owned. Such quasi-public property under Pennsylvania Law is a proper situs for peaceful picketing and as such, the normal rules governing trespass actions do not apply.

6.

That the defendant has not caused large numbers of persons to congregate in front of and about the entrances of Weis Markets, Inc. nor has the defendant been guilty of any unlawful act as defined by the Labor Anti-Injunction Act.

7.

That by granting the relief of a Preliminary Injunction without notice or hearing, greater injury is now being inflicted upon the defendant by the granting of said relief than would have been inflicted upon the plaintiffs by the refusal of said relief in that the defendant's ability to inform the public has been impaired and harmed by the ability of the plaintiffs to obtain Preliminary Injunction without notice or hearing based upon the improper, inaccurate, false and misleading affidavits. In being required to picket on public property at the entrances to the shopping center area, the pickets

are required to stand on the berm of heavily traveled roads which creates an extremely dangerous situation for them and further, their picketing indirectly affects other tenants of the Logan Valley Plaza, Inc. Shopping Center which in no way is desired by the defendant. Said injury is substantial and irreparable for which there can be no adequate remedy.

8.

That said Preliminary Injunction Order as issued is improper for the reason that it fails to provide any restraints upon the plaintiffs to prevent them from retaliation in any form against those employees who have participated or will participate with the defendant actively or passively in their peaceful and lawful picketing.

9.

That said Preliminary Injunction Order as issued is improper for the reason that said Order in no way prevents or enjoins the plaintiffs or its employees from any acts of threats of violence, intimidation, coercion, molestation, libel or slander against the defendant.

10.

That by reason of the foregoing, said Preliminary Injunction Order does not preserve the status quo as is required by equity but rather gives to the plaintiffs an unwarranted and unreasonable advantage in this current labor dispute.

Motion To Dissolve or Modify Preliminary Injunction

11.

That by reason of the Labor Management Relations Act, 29 USCA §§141 et seq., your Honorable Court is without jurisdiction in this labor dispute whatsoever in that said Act by providing a method and remedy of correcting an unfair labor practice has removed this type of labor dispute from the sphere of state action and thereby precludes your Honorable Court from entering any decree whatsoever in this matter.

Wherefore, the defendant respectfully prays your Honorable Court to forthwith dissolve the Preliminary Injunction heretofore issued in this matter or in the alternative to modify said Order so as to more adequately maintain the status quo between the parties and further, that the defendant be allowed to peacefully picket on the property of the plaintiff, Logan Valley Plaza, Inc., it being quasi-public property. In addition thereto, the defendant respectfully prays your Honorable Court, if said Preliminary Injunction is modified and continued, that said Injunction Bond as heretofore filed by the plaintiffs be ordered increased to the sum of Five Thousand ($5000) Dollars.

John R. Strawmire,
Attorney for Defendant.

(Affidavit)

IV.

THE EVIDENCE

John M. Klepser, President Judge.

John Woodcock, Esquire, Counsel for Logan Valley Plaza, Inc.

Robert Lewis, Esquire, Counsel for Weis Markets, Inc.

John R. Strawmire, Esquire, Counsel for Defendants.

Transcript of Testimony taken January 4, 1966.

MR. WOODCOCK: If your Honor please, I move that Robert Lewis, Esquire, a member of the New York Bar, be admitted specially for the trial of this case.

THE COURT: Motion is granted.

MR. FRED BASEHORE, after having been duly sworn according to law was examined as follows:

Direct Examination

BY MR. LEWIS:

Q. What is your full name?

A. Fred Basehore.

Q. By whom are you employed?

A. Weis Markets.

Q. What is your position?

A. Assistant General Superintendent for the Northern Division.

Q. What are your duties?

A. *I oversee the entire operation for* Weis Markets in these particular markets.

Q. Do you know on what date a store was opened to the public for the first time in Altoona?

A. Yes, December 8th.

Q. Where is this store located?

A. On Logan Valley Boulevard.

Q. On December 8th of what year?

A. 1965.

Q. What is the street address of that store, do you know?

A. Plank Road, Logan Valley Mall.

Q. Were you present at this store on the evening of December 17, 1965?

A. I was.

Q. Did anything unusual happen at that time?

A Yes, shortly after six o'clock I noticed four gentlemen appeared wearing signs.

Q. How long did they remain there?

A. Until closing time.

Q. What time is closing time?

A. That is 10:00 o'clock.

Q. 10:00 o'clock p.m.?

A. Yes.

Q. Do you recall the wording on these signs?

A. Yes. "Weis Markets is non-union. These employees are not receiving union wages or benefits. Amalgamated Food Clerks Union, Local 590."

Q. Approximately where were they standing with relation to the store?

A. In our parcel pick-up zone, which is approximately 5 feet from the porch.

Q. What is the parcel pick-up zone used for?

A. We use it strictly for customers to come and enter to pick up their parcels which they had purchased.

Q. Do they come in any vehicle?

A. Oh yes.

Q. They drive in?

A. They drive in to this particular area, and there the groceries are loaded into the cars by our boys on what we call pick-up duty.

Q. Is this area marked in any way?

A. It sure is. Very plainly marked.

Q. What does it say?

A. "Parcel pick-up." And it has a bold double line right down there.

Q. On the night of December 17th were the pickets walking in this vicinity?

A. They were.

Q. Were the cars moving in this vicinity?

A. Yes.

Q. Sporadically or continuously, or how often?

A. Mostly continuously as it was a Friday night, which is quite busy.

Q. Did you observe what occurred at this time?

A. I did.

Q. Where were you standing?

A. I was inside the store as well as out. I was right out on the porch with the boys helping to unload because there was quite a congestion.

Q. All right then, how far away from the pickets were you at this time?

A. Oh, at this time it might have been 5, 6 feet.

Q. How far away from the parcel pick-up zone were you?

A. I was right up to it, I was right at the edge of the porch.

Q. Will you describe what happened, that is, on the evening of December 17th?

A. Yes. These pickets arrived and naturally caused quite a concern on my part as it was causing congestion out there and customers were milling around trying to get in as well as leave. After they had the groceries loaded in the car they had a problem of waiting until some of the pickets stepped out of the way that they could leave the zone. Then I recall another incident around nine o'clock when I was in the store and one of the boys came out and said, "Our pick-up zone is completely halted." And I said, "It is, what is the trouble?" As I was going out the door to check on this incident the boys said, "It is the Manager from the A & P, he is parked in our pick-up zone." And he was parked in a position that the cars couldn't enter or leave. So I went over to the man, and I said to him, "Will you move your car out of the way?" And he very sharply turned to me and says: "Are you asking me or telling me?" I said, "If this is

the way you want it I am asking you, will you please move your car out of the way?" It was causing quite a congestion so the gentleman did move.

Q. Now when cars enter your pick-up zone do you know what rate of speed they are traveling?

A. No, I wouldn't be able to tell you in miles per hour what rate of speed. No I wouldn't be able to answer that.

Q. Would you be able to answer whether cars entering the pick-up zone travel at approximately the same rate of speed as cars entering the parking lot itself on the main road?

A. Yes, I would say that, as they come around the corner from Sears they would, yes, sir.

Q. What is your answer?

A. I would say the same rate of speed as they enter our entrance out at the berm, out at the highway.

Q. It would be the same rate of speed as they enter?

A. (Interposing) As they would come around the corner into the pick-up zone, yes.

Q. You refer to the Manager of an A & P Supermarket, what A & P Supermarket is this?

A. That is the one on Plank Road about a half mile from the store.

Q. Has this picketing that you have ascribed as occurring on December 17th continued after the 17th?

A. It has.

Q. To what time?

A. They didn't picket the day before Christmas but then they came back the following week.

Q. Did they picket up until the time that the court issued an injunction in this matter?

A. They did, with the exception of the day before Christmas.

Q. And then where did the picketing occur after the injunction was issued?

A. Out on the berm.

Q. Have there always been 4 pickets?

A. It has varied.

Q. From what number?

A. Very seldom less than 4, but we have had as high as 13 I recall on the night of December 21st, a Tuesday night.

Q. Where were these 13 people picketing?

A. On our parcel pick-up area.

Q. Were they marching single file or abreast of each other?

A. They were marching abreast.

Q. How many were abreast?

A. Two, and sometimes they would go into 3 or 4.

Q. How close did they come to the porch?

A. As close as 2 feet.

Q. Were they ever on the porch itself?

A. There were occasions when they had stepped up on the porch. There was a couple girls on the day of the 21st, in the afternoon, they stepped up on the porch.

Q. Have you ever spoken to the pickets?

A. Yes, on one occasion, on Monday night, December 20th. Shortly after six o'clock I saw the pickets arrive, I walked up and approached the one gentleman who I thought was in charge of them,

and I said to him, "Do you intend to picket here?" He answered he was or he had intended to. I said to him, "Do you know you are picketing on private property?" And he said, "No, this belongs to Crown Construction." I said to him, "No, this property belongs to Weis Markets." He said, "Where does Weis Market's property end?" So I said, "Out along the highway right at the edge of the macadam." And I said, "If you want to picket do your picketing out there." And I immediately turned and left, I said no more and nothing was said to me.

Q. What did he do if anything?

A. They continued their picketing.

Q. Do you have a Sign posted on your property prohibiting picketing?

A. Yes.

Q. Or trespassing?

A. Yes.

Q. What does the Sign read?

A. "No trespassing or soliciting is allowed on Weis Market porch or parking lot by any one except Weis employees without the consent of the management."

Q. Do you know who is the property owner of the store proper itself?

A. Yes, Weis Markets.

Q. And the porch?

A. Weis Markets.

Q. And the parcel pick-up zone?

A. Weis Markets.

Q. And the parking lot?

A. Weis Markets.

Q. Now where is this Sign posted that you referred to previously?

A. Right between the entrance and the exit doors.

Q. When was it posted?

A. Just a few days after the opening.

Q. Which was when? December 8th?

A. December 8th when we opened. So it was a few days after that.

Q. Are you familiar with the property around the area of the store?

A. I am.

Q. I show you Petitioner's Exhibit No. 1 for identification and ask you if you would describe this property? What does it show?

A. It shows our parking lot to the west side and our store with two entrances on the west side. Now this is from Plank Road looking, I would say, North.

MR. STRAWMIRE: For clarification, to the left is Good's Lane?

A. That is correct.

Q. Anything else?

A. No, other than the two entrances here.

Q. All right, now referring to the two entrances would you identify them? What would be Entrance No. 1?

A. Back where you see a station wagon, it is a white top with dark bottom, that would be Entrance No. 1, and Entrance No. 2 would be this way (pointing). It looks like a jeep truck or something parked along the side, that is Entrance No. 2 off of Good's Lane.

Q. What would you say the distance was between the store itself and those two entrances?

A. About 350 feet.

Q. Did you mark them off, the feet?

A. Yes, I did.

Q. When did you mark them off?

A. I did this morning.

Q. I show you Exhibit No. 2 for identification and ask you to describe what that shows?

A. That is Entrance No. 1 off of Good's Lane, the same one as I identified before with that station wagon which I thought was a complete white top but it has white trim, and it shows our entranceway.

Q. What is the width of that entranceway?

A. Approximately 20 feet.

Q. Does it show any berm?

A. Yes.

Q. What is the width of that berm?

A. The berm right there is about 15 feet wide.

Q. Now what berm are you referring to?

A. The one from the highway to the edge of the ditch.

Q. Is there anything on this berm?

A. Only a Sign, "No parking at any time."

Q. What is the width of that berm?

A. Approximately 15 feet.

Q. Is there any other berm showing in that photograph?

A. Well, there is a berm before you enter this particular entrance which would be, I would say, South towards Entrance No. 2.

Q. Do you know what the width of that berm is?

A. The same, it carries right up through.

Q. Is that right in the foreground of the picture, on the lower part of this exhibit?

A. Yes, that is right.

Q. I show you Exhibit No. 3 for identification and ask you to describe what that shows?

A. This is just looking the opposite way now, looking down Good's Lane towards Plank Road, or 220, which there is a Sign there says "Junction 220", and that is our second entrance, what we call No. 2 Entrance off of Good's Lane, showing the berm, and there is that truck that I identified before as being near Entrance No. 2.

Q. I show you Exhibit No. 4 for identification and ask you to describe what that is?

A. This is on Plank Road, 220, looking at the Sears Service Center where there are two entrances close together, and there is the fifth entrance in the lot clear down there at the top of, well about the center of the picture, you see a car leaving the pick-up zone or leaving the parking lot, that is the first entrance into the shopping center.

Q. Would you identify those entrances as 3, 4 and 5?

A. Yes, the one closest to the bottom would be 3, and then 4, and 5 would be the uppermost entrance.

Q. That uppermost entrance, is that where a car is making a right-hand turn onto Route 220?

A. Yes, that is correct. That is the fifth entrance.

Q. Is there any berm in this photograph?

A. Yes, the berm isn't quite as large as over at the other place but I would say it runs around 12 feet.

Q. In width?

A. In width, yes.

Q. And does that berm continue on up to the fifth entrance?

A. Yes, right on through.

MR. LEWIS: I offer these 4 exhibits in evidence as Petitioners' Exhibits 1, 2, 3 and 4.

MR. STRAWMIRE: For what they show, your Honor please, I have no objection.

THE COURT: Let the exhibits be admitted.

Q. Do cars traveling on Plank Road or Good's Lane travel on the berms at all?

A. No.

Q. What do they travel on?

A. On the highway.

MR. STRAWMIRE: If the Court please, that would be objected to. We would assume that the cars would travel on the highway and not on the berm.

MR. LEWIS: All right, we will take the assumption and continue.

Q. Is Weis Markets involved in a labor dispute with Amalgamated Food Employees Union, Local 590?

A. No, they are not.

Q. Are any of the pickets that you have observed picketing in front of the store employees of Weis Markets?

A. No.

Q. Were they ever employees of Weis Markets?

A. No.

Q. Did you ever recognize any of these pickets?

A. Not personally that I have ever known.

Q. Were you ever told who they were?

A. Yes, I was given names.

Q. And who were they?

MR. STRAWMIRE: If your Honor please, that is objected to, if someone told him it would be hearsay.

MR. LEWIS: All right, I withdraw the question, and that is all I have.

Cross-Examination

BY MR. STRAWMIRE:

Q. Mr. Basehore, you are the Assistant General Superintendent for Weis Markets in what area?

A. The Northern area, sir, it covers 29 stores.

Q. Where do you reside?

A. Lewisburg, R. D. 2.

Q. You are not a resident of this area?

A. No.

Q. You have been in this area since this store opened?

A. As I always am at a new store opening, yes.

Q. And how long? Have you been here constantly since the store opened?

A. No, I haven't.

Q. You have other duties, don't you?

A. That is correct.

Q. You stated that the pickets have varied in numbers between 4 and 13?

A. Yes.

Q. What is the average number?

A. I would say 6 and 7.

Q. And that is while they were picketing in and about the store area, is that correct?

A. 13 were in and about the store area.

Q. Were there 6 and 7 in and about the store area too?

A. Yes.

Q. How many were picketing out at the berm?

A. 5 and 6.

Q. At what entrances?

A. At each entrance, well there is maybe 2; 1, 2; 2 or something like that.

Q. Well now, that doesn't explain too much. At what entrances?

A. At each entrance there has been pickets.

Q. You have testified as to entrances 1, 2, 3, 4 and 5?

A. All right, now I couldn't give you—

Q. (Interposing) Which is the main entrance would you say from Plank Road by number, which would be the main entrance?

A. I would say at 5.

Q. 5 would be the main entrance?

A. Off of Plank Road.

Q. And on Exhibit No. 4 you can barely see Entrance No. 5 can you?

A. You can see it as you can see the cars coming out of that entrance.

Q. You can see but you can't see how wide it is and so forth?

A. It is the same as the rest of them, sir.

Q. It is the same as the rest of them?

A. Yes, the entrance is approximately 20 feet wide and the berm carries the same down through.

Q. And then entrances 3 and 4 are entrances primarily to the Sears Gas Station or Service Center, is that right?

A. I would say 3 is, Entrance No. 4, people use that also to go into the Center.

Q. Exactly. No. 4 is utilized also to go into Weis Market and to Sears, is that correct, the store proper?

A. Yes, I would say primarily Sears off of that particular entrance.

Q. Entrance No. 2 is utilized by people going to both places of business, is that correct?

A. Yes.

Q. And Entrance No. 1 the same way?

A. Yes, I would say primarily that is the people coming into our Store but it can be used for both, that is correct.

Q. Do you know how many people use which entrance to go to which store?

A. I couldn't give you an honest answer.

Q. No, it would be rather difficult, wouldn't it?

A. Yes, it would be rather difficult.

Q. So that there are people coming into all the entrances and going to both of the stores, is that correct?

A. Yes.

Q. You stated that Weis Markets owns the store parking lot, is that right?

A. That is right.

Q. Do you know under what legal arrangement Weis Markets has any interest in the parking lot?

A. No, other than they own the property.

Q. You don't know, do you?

A. I know they own the property.

Q. How do you know they own the property?

A. How do I know? Because I have been told it is our property.

Q. You have been told. You don't know of your own knowledge what they own, is that correct?

A. I know that if they tell me they own the property they own the property.

Q. What you have been told, is that correct?

A. That is right.

Q. If I state that in the Complaint or in the order of court which was prepared by the attorneys for Weis Markets it states:

> "Picketing and trespassing upon the private property of plaintiff Logan Valley Plaza, Inc. located at Logan Valley Mall, including parking area and all entrances and exits leading to said parking area."

And it further states:

> "Picketing and trespassing upon the private property of the plaintiff Weis Markets, Inc., located at Logan Valley Mall, Altoona, Pennsylvania, including as such private property the storeroom, porch and parcel pick-up area."

Would you say that the attorneys for Weis Markets would be wrong?

MR. LEWIS: Objection. I don't think it is proper for a witness to characterize whether the attorneys are right or wrong.

MR. STRAWMIRE: I will withdraw the question, if your Honor please.

Q. The fact is that you do not know under what legal arrangement the ownership of the land or store or anything there is except by what someone has told you, is that correct?

A. Yes.

Q. You have never seen a deed, you have never seen any agreement between Logan Valley Plaza, Inc. and Weis Markets have you?

A. Yes, I have seen an agreement.

Q. What is the date of that agreement?

A. That I couldn't answer.

Q. What does the agreement provide?

A. It provides the Center may use the property for installing a parking lot, any drainage lines, or what have you that has to be utilized in building a shopping center.

Q. Who is the agreement between?

A. I would say Weis Markets and Crown Construction Company.

Q. I don't know of any such agreement. Mr. Basehore, what is the distance between Entrance No. 1 and Entrance No. 2?

A. Sir, I couldn't give you that in footage, I don't know.

Q. You said you measured it off 350 feet?

A. From the store to the Number 1 entrance there, that is what was stated.

Q. I misunderstood you. From Weis Market store building?

A. That is right.

Q. To Number 1 entranceway?

A. That is correct.

Q. Is 350 feet?

A. Yes, approximately.

Q. From the store to Number 4 entranceway, how far is it?

A. That I could not answer, sir, I do not know.

Q. Is it further or less distance than 350 feet?

A. I would say it is further, sir.

Q. From the store to Entrance No. 5, which you have described as being the main entrance is a distance of how far?

A. It is even further, sir.

Q. It is even further?

A. Yes.

Q. Would it approximate perchance up to 450 feet or 500 feet?

A. Yes.

Q. You say on December 17th four men arrived with Signs and they located themselves on the parcel pick-up zone?

A. Correct.

Q. Did that halt your store business?

A. No, it didn't halt it, but it sure involved a lot of I would say constant navigating by customers in and out, and in fact I have even heard comments from customers on this.

Q. What did the customers comment?

A. They wanted to know why the people were out there and she said she almost hit one of them.

Q. She almost hit one of them?

A. Yes.

Q. And they were in your parcel pick-up area?

A. Right.

Q. And that is located right next to your porch?

A. Yes it is, right adjacent, right beside it.

Q. And next to that area then there is 2 lanes of traffic, next to the parcel pick-up area would there be 2 lanes of traffic?

A. There could be 2 cars pass there yes.

Q. Now you have stated that the speed of cars at that area is the same as speed of cars entering from Plank Road?

A. They have come down along Sears there, sir, and they turn on the pick-up area yes.

Q. They have at times; is that what you are saying?

A. Oh yes.

Q. You say that speed there is always the same as speed of cars entering from Plank Road?

A. It will vary, even somebody entering into Plank Road could be going at excess speed.

Q. Are you familiar with Plank Road?

A. Yes, I am.

Q. It is a pretty heavily traveled highway, isn't it?

A. It certainly is.

Q. And the cars move with very good speed too, don't they?

A. On Plank Road they do yes, but you can not navigate a turn properly by excess speed as you enter the lot too.

Q. Do you have a picture of the main entrance-way, Number 5?

A. It is shown on Number 4.

Q. Do you have a separate picture of Entrance No. 5?

A. No, we don't.

Q. Now you relate one incident where a car stopped and Mr. Toft I believe—I don't think you did mention the name?

A. No, thank you, I didn't.

Q. You mentioned one incident where a car stopped and someone was talking to the occupant of that car, and you identified the operator of the car as being the Manager of the A & P Supermarket where?

A. Plank Road.

Q. You didn't know him, did you?

A. I had seen him before in his store, yes.

Q. You saw him before at his store?

A. Yes.

Q. You were in his store were you?

A. Yes, I was.

Q. What were you doing in his store?

A. Just looking around.

Q. Just like some of these people were looking around your store?

A. Yes.

Q. Were you comparison shopping?

A. No, I didn't make any notes as far as that goes.

Q. You looked around his store to see what his operation is and so forth?

A. Yes.

Q. The same as these people did here?

A. Yes.

Q. Did they cause you any trouble when you asked them to leave or your employees asked them to leave the store?

MR. LEWIS: Objection. There was no testimony by this witness concerning people in the store.

THE COURT: Objection is sustained.

MR. STRAWMIRE: Very well.

A. I didn't ask any one to leave the store.

Q. You testified as to one occasion where someone stepped on the porch?

A. That is correct.

Q. These were some ladies that were picketing?

A. That is correct.

Q. Did they cause problems by stepping on the porch?

A. No, but I was asked if they had stepped on the porch. I answered the man's question, they had stepped on the porch.

Q. They didn't cause you any problems?

A. The question wasn't asked that way.

Q. I am asking the question, did they cause you any problems?

A. No problems.

Q. On the 21st you stated there were 13 pickets there, is that correct?

A. That is correct.

Q. It is on that occasion that some of them were walking abreast?

A. That is right, and even during the afternoon, that was when the 13 were there, they had walked more than two abreast, and also in the afternoon while the girls were there, they were walking four abreast many times.

Q. And at that time they were walking, is that correct?

A. Both, they would stand and—

Q. (Interposing) Where were they standing or where were they walking?

A. Right where the cars will drive in for the groceries.

Q. Did they halt or stop the cars from driving in for their groceries?

A. It hindered it, sir.

Q. It hindered it. Did people get in for their groceries and did they get out with their groceries?

A. Yes, but very annoyingly they did.

Q. Annoyingly to who? To the people or to you?

A. To the customers.

Q. You stated that most of the time they were walking about 2 feet from the porch?

A. Yes.

Q. In other words, the bulk of the time they were not on the porch, is that it?

A. They were only on the porch that one occasion as I answered.

Q. And you have a sign posted on the porch, is that it?

A. That is correct.

Q. And the sign says, "No trespassing or solicitation without the consent of the management", is that correct?

A. That is correct.

Q. Does it say "no picketing"?

A. "No trespassing."

Q. Does it say "no picketing"?

A. No, sir, it doesn't.

Q. So that you have been open since what date?

A. December 8th.

Q. And since December 8th you have carried on operations, is that correct?

A. That is correct.

Q. And you have opened and closed every day except Sundays or Holidays, is that correct?

A. Correct.

Q. And people have come to your market and have purchased and left, is that correct?

A. Yes.

MR. STRAWMIRE: I have no other questions at this time.

MR. LEWIS: I have one or two on rebuttal questions.

Redirect Examination

BY MR. LEWIS:

Q. Would you restate the full wording of that Sign that is on the porch as you can recall it?

A. "No trespassing or soliciting on the porch or Weis Parking Lot other than Weis employees without the consent of the Management."

Q. What is the main entrance used by customers of Weis Markets? What entrance do they most frequently use of 1, 2, 3, 4 and 5?

A. I would say 1 and 2.

THE COURT: They are off of Plank Road?

A. Off of Plank Road, yes, sir.

MR. STRAWMIRE: If your Honor please, there is some confusion.

Recross-Examination

BY MR. STRAWMIRE:

Q. Off of Plank Road, is that your answer?

A. For Weis Market customers.

Redirect Examination

BY MR. LEWIS:

Q. 1 and 2 is on what road?

A. I am sorry. I am sorry, your Honor, off of Good's Lane. Good's Lane is 1 and 2. Thank you.

Recross-Examination

BY MR. STRAWMIRE:

Q. Mr. Basehore, which is the most heavily traveled road? I am sure the Court knows but do you know? Plank Road or Good's Lane?

A. Plank Road.

Q. And yet you say that most traffic comes in from Good's Lane?

A. For us, yes.

Q. Well, isn't there traffic comes into you from Plank Road?

A. I would say there is a certain amount naturally. I would be giving a wrong statement if I said differently, but I would say most of the people come up to Good's Lane, make a right, come down and come in the entrance to our store.

Q. You have been there since the store opened, do you know whether any of your customers also shop at Sears?

A. I know they do.

Q. Why sure they do, don't they? They do two things at one time with a visit to the Mall, is that correct?

A. Yes, I would say. There is also people who don't. I imagine there are people come in and just shop Sears and leave, and there is people who come in and Shop Weis's and leave, and there are people who shop both, certainly.

Redirect Examination

BY MR. LEWIS:

Q. I have one other question. Is there any other stores besides Sears and Weis's presently in this location?

A. No.

Recross-Examination

BY MR. STRAWMIRE:

Q. There are other stores contemplated but none presently finished?

A. Correct.

MR. LEWIS: We rest our case, your Honor.

We would like to offer a Stipulation concerning the references to the deed, the documents of record that were referrd to previously, and I think there will be a Stipulation between the parties.

THE COURT: Very well.

MR. WOODCOCK: I represent Logan Valley Plaza, Inc., and Logan Valley Plaza, Inc. and Weis Markets have an agreement which is duly recorded in Deed Book Vol. 831 at page 36, which is incorporated here by reference, there are two.

help resolve a constitutional free speech issue in Nahas v. Local 905, Retail Clerks Ass'n, supra [144 Cal. App. 2d 808, 301 P.2d 932, rehearing denied 144 Cal. App. 2d 820, 302 P.2d 829].

"In weighing the parties' conflicting interests of private property and free speech, we would want to know the physical characteristics of the shopping center so that our decision on this important policy question could be applied with clarity to other disputes which might arise . . . ." 114 N.W. 2d 879-880.

(2) *Freeman v. Retail Clerks Union Local No. 1207,* 363 P.2d 803 (Wash. 1961) (concurring opinion), wherein a concurring judge observed:

"Under ordinary circumstances, the owner of property can control who goes on it and for what purpose; however, a formal dedication to public use is not necessary to greatly limit that control. The legislature has imposed limitations upon the owner's right to exclude persons from his premises or to refuse service to them on account of race or creed, if the premises are used as a place of public resort. In other instances, entirely apart from the legislative action, the courts have placed a limitation on the control than an owner might exercise over his property, as in company towns.

"In this case, it is conceded that legal title to the property, over which the pickets carried their signs, was in the appellants—and not in the public. The issue presented was whether the property owners, despite their precautions and efforts to protect their right to control the use of the property, had lost the right to prevent the pickets from carrying their signs. (I take it that the pickets, sans signs, were just like other members of the public, and entitled to be where they were.)

* * *

"If instead of being a shopping center, the property in question was merely a forty-acre pasture for contented cows, but a desirable place from which

pickets could carry signs imparting information (relative to the nonunion status of the employees of J. C. Penney Company) to the customers of that company, there could be no questions that the owner would be entitled to an injunction—not to restrain the picketing, but to prevent their trespass on property where they had no right to be."

If the union activity involved herein did not amount to a trespass, then there arises the question of federal preemption. I shall avoid a lengthy discussion of that subject, but want to emphasize that the federal decisions stress the high degree of freedom allowed union activity on the property of the employer. While those cases are not controlling authority, they do indicate that the case before us is not as open-and-shut as the majority believe. Many of the federal cases are thoughtfully analyzed in Annot., 100 L.Ed. 984 (1956).

There is another basis for my disagreement with the majority. By restricting picketing to the berm areas at the entrances and exits, the majority have lent their sanction to an activity which has overtones of a secondary boycott. Again, I do not intend to discuss at length the unlawful and harmful effects which can occur to neutral employers by such activity but recommend 10 Stanford L. Rev. 694, 702-706, which considers the evils and possible cures of picketing at shopping center entrances.

Had the majority opinion made reference to the foregoing inescapable conflicts, I might not enjoy the result any more than I now do, but at least I would be satisfied that the majority opinion recognized the problems involved.

I dissent.

JUSTICE EAGEN joins in this dissent.